COMMISSION REGULATION (EEC) No 2064/90

of 17 July 1990

imposing a provisional anti-dumping duty on imports of linear tungsten halogen lamps originating in Japan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for in the above Regulation,

Whereas :

A. PROCEDURE

(1) In March 1989, the Commisson received a complaint lodged by the Liaison Group for the Mechanical Electrical and Electronic Engineering Industries (Orgalime) on behalf of producers whose collective output constituted substantially all Community production of linear tungsten halogen lamps. The complaint contained evidence of dumping of this product originating in Japan and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of linear tungsten halogen lamps (hereafter referred to as LTH lamps), falling within CN code ex 8539 21 91, originating in Japan and commenced an investigation.

(2) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

Some exporters and some importers and all Community producers represented by the complainant made their views known in writing. Submissions were also made by the 'Syndicat des Industries de l'éclairage électrique et de la régulation de trafic' in France, the 'Associazione nazionale industrie elettrotecniche ed elettroniche' in Italy and the European Lighting Council in Belgium.

(3) The investigation of dumping covered the period from 1 July 1988 until 30 June 1989 (the investigation period).

(4) The Commission sought and verified all the information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following :

(a) **Community producers :**

- Osram GEC Ltd, Wembley, United Kingdom
- Osram GmbH, Munich, Federal Republic of Germany, and its sales subsidiaries in Germany, France and Italy
- Philips lighting BV, Eindhoven, Netherlands, and its sales subsidiaries in France, the Netherlands and Italy
- Thorn Lighting Ltd, Enfield, United Kingdom

(b) **Japanese producers/exporters :**

- Iwasaki Electric Co. Ltd, Tokyo
- Phoenix Electric Co. Ltd, Kasai-City
- Sigma Corporation, Himeji City

(c) **Japanese exporters**

- Fuji Electric Lam Industrial Co. Ltd, Tokyo
- Miyakawa Corporation, Tokyo

(5) The Commission requested and received detailed written and oral submissions from the Community producers represented by the complainant, the exporters named and a number of importers, and verified the information provided to the extent considered necessary.

(6) Toshiba Lighting and Technology Corporation decided not to reply to the Commission's questionnaire.

(7) Ushio Inc. claimed that it had not exported LTH lamps for illumination to the Community at any time.

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 183, 20. 7. 1989, p. 9.

(8) Matsushita Electronics Corporation and Hitachi Ltd claimed that they had not exported the product concerned to the Community during the reference period.

(9) Nagata Co. Ltd replied to the Commission's questionnaire but did not agree to an investigation by the Commission at its premises. Consequently, no account has been taken of this company's reply.

B. PRODUCT UNDER CONSIDERATION

(a) Definition of product

(10) The products concerned by the proceeding are linear tungsten halogen lamps exceeding 100 volts, of 100 watts or more, double ended with R7s caps, of a kind used for illumination, falling within CN code ex 8539 21 91. The principal elements are the linear quartz tube, the tungsten filament, the gas and the two caps.

(b) Like product

(11) LTH lamps are produced in the Community in different models according to their wattage. Since however all these models have the same basic application and perform the same basic function, i.e. indoor or outdoor floodlighting, regardless of their size and power and are, to a considerable degree, interchangeable, the whole range of models has to be considered as forming one single category of products. It was found that the Japanese exporters/producers offer the same range of models, and their basic technical and physical characteristics are identical.

The fact that the models sold in Japan have different voltages or that the Japanese models sold in Japan or exported to the Community have components, for example the filament, which differ somewhat from the models produced and sold by the Community producers concerned does not alter the similarity of the technology applied in production and of the identical nature of the basic physical and technical characteristics.

The Commission considered therefore that the LTH lamps with R7s caps produced and sold by the Community manufacturers which form one single category of product, constitute a product alike in almost all respects to the product imported from Japan in the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

(12) Some exporters claimed that there were two distinct markets in the Community, based on the quality of the products: a 'high class' end-user market on the one hand, to which the Community manufacturers sell most of their output and on the other hand a low priced mass market in which the Japanese exporters are active.

The Commission's investigation revealed, however, that there were no significant quality differences between LHT lamps produced in the Community and those sold in Japan or imported in the Community significant enough to make these products different from each other. In addition, it was found that both Japanese and Community manufacturers sold similar products on the same Community market. The Japanese sold mostly to distributors while the Community industry sold more to dealers. They both also sold to 'fitting manufacturers'. It cannot be inferred from the mere fact that there are different kinds of customers that therefore the products and the markets are different.

(c) Scope of the investigation

(13) Some exporters argued that in the complaint no allegations of dumping or injury had been made concerning LTH lamps below 200 watts or above 500 watts. It should be pointed out that both the complaint and the notice of initiation referred explicitly to all types of LTH lamps of 100 watts and over. Moreover, the evidence contained in the complaint concerning dumping related to the range between 200 and 500 watts because it was considered to represent the greatest proportion of the whole range of lamps covered by the complaint. In addition, the supporting evidence related to material injury or threat of injury covering the whole range of LTH lamps for 100 watts and over. For the reasons outlined above the Commission is of the opinion that the scope of the investigation should not be restricted to lamps between 200 and 500 watts.

C. DUMPING

(a) Normal value

(i) *Domestic prices*

(14) All producers/exporters investigated reported limited domestic sales of LTH lamps. To determine whether domestic sales may be considered sufficiently representative as a basis for normal value the Commission has established in previous cases that domestic sales of comparable models should be at least 5 % in volume of the quantities exported to the Community. This practice has been developed to ensure legal certainty in cases where domestic sales are small in comparison to export sales.

(15) It was found that during the investigation period only one company had sold two of its models on the domestic market in volumes exceeding 5 % of quantities exported to the Community. This company, however, argued that the number of units sold on the domestic market should be adjusted downwards by deducting the quantities relating to a number of 'negative transactions', the effect of which being a reduction in the number of units sold domestically to a level just below 5 % of the exported quantities. Under the name 'negative transactions', the company concerned included several cases in which sales made in the ordinary course of trade were cancelled or postponed for a variety of reasons. Errors, return of goods because of bad quality, cancellation of sales orders, transfer of sales from one period to another were mentioned. In the great majority of these cases, however, the sales concerned had been made unconditionally and were only subsequently subject of a claim. Therefore, the Commission considered that the alleged 'negative transactions' were not of such a nature as to make the sales concerned unreliable and that they reflected normal conditions of supply and demand in Japan. Accordingly, it was considered that domestic sales of the two models concerned represented more than 5 % of the volume of these models exported to the Community and that, therefore, they were sold in sufficient numbers for a viable market for the two models of LTH lamps in question to exist in Japan. They constitute therefore an appropriate basis for the determination of normal value.

(16) It has been alleged that the quantities sold in Japan of the two models mentioned above were very small in relation to the total quantities exported to the Community and that the demand in Japan for LTH lamps is limited and irregular. Certain exporters contested also the representativity of the prices charged for the two models in question.

(17) The Commission is of the opinion that it is necessary to compare domestic sales with exports to the Community on a model by model basis rather than on the basis of all sales, especially because the particularities of the product require a different normal value to be calculated for each model. The fact that the demand in Japan for LTH lamps may be limited and irregular is not a sufficient reason to consider the sales made and the prices charged on the Japanese market as unrepresentative if it is shown that, for at least some models, the above-mentioned 5 % threshold was reached. Finally, the Commission notes that the price levels at which these sales were made in Japan have been confirmed by price lists and actual prices of other Japanese producers which did not export to the Community whose domestic sales considerably exceeded the domestic sales of the company in question. The Commission consequently concluded that the results of the application of the 5 % threshold were fully in line with the actual domestic price situation during the investigation period and that the domestic prices of the two models formed a justifiable basis of comparison with the export prices to the Community.

(18) Since the domestic sales of two models exceeded 5 % of the quantities exported to the Community, the Commission consequently established, for the sole producter/exporter concerned, normal value of the two models concerned on the basis of the weighted average domestic price of all sales of these models to independent customers.

(19) It was established that two other producer/exporters did not have domestic sales of any model of LTH lamps reaching 5 % of the quantities exported to the Community. For the two models referred to in recital 18 which were also sold for export to the Community by these two remaining producers/exporters, normal value was established in accordance with Article 2 (3) (a) of Regulation (EEC) No 2423/88, i. e. on the basis of the price actually paid in ordinary course of trade for the like product introduced for consumption in Japan. These prices are those described in recital (18).

(ii) *Constructed normal value*

(aa) For own brand sales

(20) Where models comparable to those sold for export were not sold or were not sold in sufficient quantities (i .e. less than 5 % of quantity exported) during the reference period, the commission determined normal value on the basis of constructed value. The constructed values were calculated by taking all costs, both fixed and variable, in the country of origin, of materials and manufacture plus selling, administrative and other general expenses (SG&A) and a reasonable margin for profit. The amounts used in the constructed values for SG&A and profit were, for the producer/exporter which sold representative quantities of two models in Japan, the weighted averages of the expenses incurred and profit realized by this producer/exporter by its domestic sales of these two models, and for the other producer/exporter which did not have domestic sales of any models, by reference to the weighted average of the expenses incurred and profit realized by the producer/exporter selling the product concerned on its domestic market.

(21) One exporter claimed that its domestic sales were mostly to dealers, while its export sales were to distributors. The exporter claimed that an allowance should be made to take account of the difference in the level of trade between domestic and export sales. However, since it was not demonstrated that the functions of the distributors were distinct from those of the dealers, and that these differences were clearly reflected in the quantities sold, in the pricing policy and also in the pattern of prices found on the domestic market, the Commission did not agree with the argument in question.

(22) One producer/exporter which did not have sufficient domestic sales of LTH lamps proposed that the normal value be constructed on the basis of the SG & A expenses and profit made on its sales in Japan of a different type of halogen lamp called the JD lamp. The company argued that JD lamps should be considered like products to the LTH lamps covered by the investigation. In view of the existence of sales on the Japanese market of LTH lamps the Commission is of the opinion that the JD lamp which has different characteristics to the exported LTH lamp is not a like product for the purposes of the application of Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88. That Article explains clearly the method to be applied in cases where a producer/exporter does not have any or insufficient domestic sales of the like product on its domestic sales. The constructed value to be calculated in such a case should include, in addition to costs of materials and manufacture, SG & A expenses and a margin for profit. The question raised here is which expenses and profit should be used for this purpose. In this particular case, the abovementioned Article is very clear since it refers to the expenses incurred and profit realized on the sale of the like products by other producers or exporters in the country of origin. Since one of the producers/exporters concerned had sufficient domestic sales of two of its models, the Commission followed the requirements of the Regulation strictly by including in the constructed value of the models not sold in sufficient quantities on the domestic market the expenses incurred and profit realised by another producer on its domestic sales of LTH lamps.

(23) The other producer/exporter which also had insufficient sales of LTH lamps on the domestic market proposed that the SG & A and profit made on its export sales of LTH lamps should be used to calculate constructed value. This method was not accepted since, according to the provisions of Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, the constructed value should include SG & A and profit realized on profitable sales of like products sold on the domestic market and not, as proposed by the company, the SG & A and profits relating to export sales. This producer/exporter, in the absence of any sufficient domestic sales, is in fact in the same situation as the exporter/producer mentioned under recital (22). The constructed value has therefore been established in exactly the same manner for these two producers/exporters.

(bb) For sales to OEM customers

(24) All Japanese producer/exporters claimed that they made no sales to original equipment manufacturers (OEMs) on their domestic market whereas their exports to the Community were mainly to OEM customers. They requested a different normal value to be used for these sales. The Commission, for the purpose of its preliminary findings, accepted that these customers had functions similar to producers which were distinct from those of other categories of unrelated purchasers and that these different functions were reflected, for the market concerned, in the quantities sold and in the pattern of prices. It was considered that a reasonable estimate should be made of the differences which could exist between own brand and OEM prices if sales of the latter had taken place on the Japanese market. Accordingly, when constructing normal values for comparison with the OEM export prices, the Commission provisionally applied a profit rate which corresponded to 50 % of that realized on the exporter's domestic brand sales or, if the exporter had no such sales, 50 % of the average profit made by the sole producer/exporter concerned.

(b) **Export price**

(25) All producer/exporters exported to the Community either directly to independent customers or through a trading company in Japan. Export prices were therefore determined on the basis of the prices actually paid or payable for the LTH lamps sold for export to the Community to independent Community customers or Japanese trading companies.

E. COMPARISON

(26) For the purpose of a fair comparison between normal value and export prices, due allowance in the form of adjustments was made in accordance with Article 2 (9) and (10) of Regulation (EEC) No

2423/88, to both the export price and the normal value for the differences affecting price comparability.

(27) As regards differences in physical characteristics, claims for allowances were granted for differences between domestic and export models. Adjustments were made where the effect on market values of such differences could be adequately demonstrated.

(28) As regards salesmen's salaries, several producer/exporters had claimed costs for salesmen for whom it could not be demonstrated that they were wholly engaged in direct selling activities. An allowance was therefore granted in each case to the extent that satisfactory supporting evidence was submitted.

(29) Allowances were also claimed for transportation, handling and storage in Japan. It was, however, established that these costs were not all directly related to the sales under consideration. The allowances claimed were consequently reduced to the directly related portion of each expense.

F. DUMPING MARGIN

(30) Normal values were compared with the export prices on a transaction by transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of LTH lamps originating in Japan for all the exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

(31) The margins of dumping vary according to the exporter and the weighted average margins expressed as a percentage of the cif prices were as follows:

Iwasaki Electric Co. Ltd	146,9 %
Phoenix Electric Co. Ltd	97,3 %
Sigma Corporation	123,1 %

(32) For the exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission considered that the results of its investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty that the dumping margin for these exporters was any lower than the highest dumping margin of 146,9 % determined with regard to an exporter who had cooperated in the investigation. For these reasons, it is considered appropriate to use this latter dumping margin for this group of exporters.

G. INJURY

(a) The Community market for LTH lamps

(33) The Commission based its calculation of the Community consumption on the results of its investigation which revealed accurate sales figures of Community producers and of the cooperating Japanese exporters. In the absence of separate official statistics for LTH lamps, it was considered reasonable that the figure thus calculated be increased by an estimated 10 % to take account of imports from countries other than Japan and from the Japanese producer/exporters which did not reply to the Commission's questionnaire. On this basis the consumption of LTH lamps in the Community increased from 5 400 000 units in 1985 to 22 200 000 units during the investigation period, i.e. an increase of more than 300 %.

(b) Volume and market share of dumped imports

(34) Between 1985 and the investigation period imports of LTH lamps from Japan increased from 1 800 000 units to 13 464 000 units, i.e. an increase of more than 640 %. In terms of market share the Japanese exporters' share of the Community market increased from 33 % in 1985 to more than 60 % during the investigation period.

(c) Volume and market share of the Community producers

(35) The Community producers' sales in the Community increased from 3 086 000 units in 1985 to 6 536 000 units during the investigation period. Although this represents an increase of more than 110 %, the percentage should be compared with the spectacular increase of Japanese imports indicated above and with the growth of the consumption in the Community. The Community producers' share of the EEC market decreased from 56 % in 1985 to 29 % during the investigation period.

(d) Prices

(36) The Commission investigated the development of prices charged by all Community producers concerned and came to the conclusion that there was a 21 % price level erosion between 1985 and the investigation period.

(37) As regards the price development of Japanese lamps, it was found that the Japanese export prices, which were already significantly below the

Community industry's prices in 1985, decreased, despite this difference, by a further 17,6 % from 1985 to the end of the investigation period.

(38) In addition, the Commission investigated to what extent the prices practised by the Japanese exporters undercut the prices of Community producers during the investigation period. Some exporters claimed that for the purpose of such price comparison an allowance should be made to take account of the lower cost of production of the Japanese producers, which would justify, in their opinion, lower prices. The Commission could not accept this claim since the existence of price undercutting depends on a difference between the prices charged on the Community market, as provided for in Article 4 (2) (b) of Regulation (EEC) No 2423/88, and not on the costs involved. However, the Commission provisionally agreed to make an adjustment to take account of the fact that the Community producers sold mostly to dealers while the Japanese exporters sold mostly to fitting manufacturers and distributors. The Commission provisionally established this adjustment on the basis of the information available concerning dealers' margins in this business sector.

(39) On this basis, the price undercutting by the Japanese exporters varied, according to the exporter concerned, between 26,6 % and 31,9 %. On a weighted average basis the price undercutting amounted to 30,57 %.

(e) Other relevant economic factors

(i) *Production, production capacity, utilization and stocks*

(40) The Commission found that the production of the Community industry increased by 72 % from 5 086 000 units in 1985 to 8 739 000 units during the investigation period, while the increase in production capacity and in utilization of production capacity was about 53 % and 8 % respectively during the same period. Stocks held by the EEC industry went from 928 000 units in 1985 to 2 215 000 units in June 1989.

(41) The increase in production, capacity and capacity utilization should be compared with the development of consumption in the Community which increased by more than 300 %. Although some of the manufacturers concerned, despite low and further decreasing prices on the market, made investments in new production capacity to meet the growing demand, they were clearly unable to follow the expansion of the market and lost considerable market share (see recital (35)).

(42) (ii) *Profitability*

Three of the Community producers concerned continuously made losses since 1985, and from 1987 onwards they were all operating at a loss. Although for some producers the losses decreased slightly during the reference period, the Commission is of the opinion that the continuous losses made since 1985 which amounted to 16 % on average during the investigation period, have seriously affected the viability of the industry concerned.

(iii) *Employment*

(43) The number of people employed by the Community industry increased by 30 % from 1985 to June 1989. This increase in number of employees is small in relation to the growth of the Community market. In addition the total employment of the LTH lamp industry is seriously at stake in view of the continuous losses suffered.

(f) Conclusions

(44) To determine whether the Community industry concerned suffered material injury the Commission took account of the following factors:

— imports from Japan increased at an extremely rapid rate, i.e. by more than 640 % between 1985 and the investigation period,

— while the production and sales of the Community industry increased between 1985 and mid 1989, this development did not follow the considerable increase in consumption which took place during the same period. In fact, the growth of the Community market by more than 300 % contrasts with the decrease of the Community producers' market share from 57 % to 29 %. At the same time, stocks held by the Community producers increased considerably,

— the Community producers' selling prices suffered from significant depression since 1985 leading to sales at prices below cost of production and continuous financial losses. Significant prices undercutting was also established during the investigation period,

— the effect of the abovementioned decrease of market share in a growing market is reflected in the absence of any meaningful economies of scale.

(45) The abovementioned loss in market share, price depression and continuous financial losses over several years led the Commission to the conclusion that for the purpose of its preliminary findings, the Community's industry suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

H. CAUSATION

(a) Effect of dumped imports

(46) In its examination of the extent to which the material injury suffered by the Community LTH lamp industry was caused by the effects of the dumping described above, the Commission found that the loss of market share by the Community industry coincided perfectly in time and in percentage with the increase in market share held by the Japanese exporters. With only a few relatively unimportant other suppliers present on the market during the investigation period considered, the Japanese exporters obtained almost exactly the market share which the Community industry lost, i. e. about 28 %.

(47) The lowering of export prices, which were already significantly below the prices of the Community industry since 1985, exerted a continuous downward pressure on prices of LTH lamps in the Community. This led the Community industry to decrease its price to levels below its cost of production. This development did not prevent the Community industry from losing important market share, causing an increase of its production costs, depriving it of the possibility to realize economies of scale and thus leading to considerable financial losses. The Commission therefore considers that the considerable material injury suffered by the Community industry is directly linked to the sales made by the Japanese exporters in the Community at dumped prices.

(b) Effect of other factors

(48) The Japanese producer/exporters and some importers alleged that other third countries, especially the People's Republic of China, had exerted considerable price pressure during the investigation period through price quotations below the prices of Japanese imports. The exporters concerned produced only one single quotation from a Chinese exporter which fell within the investigation period. The prices indicated in this quotation were not lower than the prices charged by the Japanese exporters. While no information is available as to whether this offer gave rise to an actual sale, it is in any event not sufficient to conclude that there would have been price depression on this basis. When asked to comment on this allegation of price depression by the Chinese exporters, the Community industry indicated that, to the best of its knowledge, no sizeable sales of Chinese LTH lamps had been made. The Commission consequently did not consider the Chinese exports to be a factor having affected the Community industry until the end of the investigation period.

(49) Some exporters argued that injury was not caused through the effect of dumping but by the higher productivity of the Japanese exporters and claimed that full account should be taken of the Japanese productive advantage of these exporters. They also alleged that there were differences in the manufacturing technology between the LTH lamps produced in the Community and produced in Japan. It was also submitted that the Community industry would not produce in sufficient quantities allowing to reach optimal costs, unlike the Japanese producers who benefitted from economies of scale. They further claimed to purchase raw materials at significantly lower prices in view of the larger quantities purchased. Moreover, the labour cost would be significantly lower than in the Community because of an alleged higher degree of automation.

(50) The Commission disagrees with this opinion. Costs advantages of an exporter are relevant in an anti-dumping proceeding only in so far as they are reflected without any discrimination in export as well as in domestic prices. This was not the fact in the present case. In addition, the alleged lower manufacturing cost of Japanese exporters was affected by economies of scale, which resulted from the vast quantities exported to the Community. These exports were found to have been sold at dumped prices during the investigation period. The cost advantages of the Japanese exporters are therefore influenced by the established dumping practices.

(51) The investigation revealed no factors other than dumped imports which caused material injury to the Community industry. All these elements led the Commission to determine that the effects of dumped imports of LTH lamps originating in Japan, taken in isolation, have to be considered as causing material injury to the Community industry.

I. COMMUNITY INTEREST

(a) General considerations

(52) The purpose of the imposition of anti-dumping duties is to eliminate dumping practices which cause injury to an industry in the Community and to re-establish a situation of fair competition on the Community market. This is undoubtedly in the general interest of the Community.

(53) The imposition of anti-dumping duties may have an upward effect on the export prices from Japan, but only to the extent deemed necessary to eliminate the injurious effects of dumping. Since the demand for LTH lamps in the Community largely exceeds the existing production capacity of the Community industry considerable space is left for

imports from third countries. The re-establishment of fair market conditions will therefore not have the consequence of excluding foreign competition on this market.

(54) The Commission also examined the effect of the imposition of anti-dumping duties on the imports of LTH lamps from Japan on the specific interests of the Community industry and other interested parties including consumers.

(b) **Interests of the Community industry**

(55) The Commission is of the opinion that the continued viability of the industry is at risk in view of the considerable loss of market share and profitability unless measures are taken to protect this industry from dumped imports which have been the cause of the material injury suffered. The closure of plants in this industry would lead to the loss of several hundred jobs.

(56) It should also be borne in mind that LTH lamps are part of a whole range of lighting products. The investigation showed that the huge volumes exported at dumped prices allowed the Japanese exporters to obtain, in a short time, a leading position in the halogen lamp market segment. This position could be used to penetrate other segments of the lighting industry, rendering it more vulnerable in other sectors, thus extending the injury already established for LTH lamps with further inevitable negative effects on the financial results and on the employment in the lighting industry as a whole.

(57) Once fair competition is established the Community industry would be in a position to regain market share in the Community and thus benefit from the same economies of scale as the Japanese exporters and consequently become more competitive. As long as the return on investment remains negative it is unlikely that the European industry would increase its marketing efforts or make the new investments required to reduce their manufacturing cost unless measures are taken to ensure protection against these unfair commercial practices. The Commission consequently considered it necessary and in the interest of the Community to preserve the viability of the Community industry of LTH lamps.

(c) **Interests of other parties**

(58) The Commission received no submissions from end-users nor from fittings makers in the Community. However, some exporters argued that anti-dumping measures would lead to significant price increases for the consumer and would increase costs and affect competitivity of the fittings makers in the Community which incorporate LTH lamps in the fixtures they produce.

(59) The Japanese exporters acquired 60 % of the Community market in a relatively short period by practising dumping. Unless measures are taken this trend is likely to continue and will almost certainly cause the Community industry to disappear. While low prices may be in the consumer's interest, it cannot in the longer term be to his advantage to see the supply of LTH lamps to the Community market restricted to virtually one single source of supply which would consequently reduce competition and thus probably lead in the medium and long term to higher prices. On the other hand, if fair competition is ensured, the possibility of a general price decrease exists.

(60) Concerning the interests of the fittings manufacturers in the Community, while no evidence was received from the exporters to substantiate the suggestion that the cost of the LTH lamps would represent a significant part of the cost of the fitting in which the lamp is incorporated, the Commission considers that the fittings makers as consumers of LTH lamps are equally served by the elimination of unfair practices.

(d) **Other considerations**

(61) Some exporters also argued that it would not be in the Community's interest to take action against Japanese imports since Chinese imports were likely to replace the Japanese imports. They claimed that the measures would consequently not benefit the Community producers, may even threaten to injure them and would discriminate against Japanese exporters.

(62) As explained in recital (47), the Commission received no evidence that Chinese imports had arrived in the Community in any significant quantities before the end of the investigation period. The evidence submitted by the exporters for the period subsequent to the investigation period consisted of one invoice and two quotations for LTH lamps originating in China which showed prices below those of Japanese imports. The Commission considered that this allegation was not supported by sufficient substantiating evidence and does not affect the necessity of taking measures in order to protect not only the Community industry but also the producer/exporter from any third country if they are not selling on the Community market at dumped prices.

Should it be demonstrated at a later stage that Chinese exports to the Community were effectively made at dumped prices and caused material injury to the Community industry, the Commission would have to consider whether it was necessary to

envisage measures. At the present stage, the uncertainty of such a development does not make it necessary for the Commission to act.

(e) **Conclusion**

(63) Having considered the various arguments of the exporters, the Commission considers that it is in the Community's general interest to eliminate the injurious effects of the dumped imports and that the benefits of such protection clearly outweigh any short term effects, particularly on price.

J. DUTY

(64) In order to eliminate the injury suffered by the Community industry, in particular the need to return as soon as possible to a profitable situation in order to guarantee their survival, it is considered necessary that the measures taken allow the industry concerned to obtain a minimal profit and the economies of scale it has been deprived of through the effects of imports at dumped prices.

(65) Consequently, it is essential that the provisional duties to be imposed should cover the difference between Japanese LTH lamps prices and the minimum price required for the Community industry to cover its costs and to make a reasonable profit.

(66) In the circumstances of the industry concerned and for the purpose of provisional determination, the Commission considers that an adequate annual return, based on the normal profit rate of this industry and the need of investments allowing a balanced long term development, should be 10 % on turnover before tax. On this basis and taking account of the considerations of price comparability as set out in recital (38), the Commission established a minimum price with which the weighted average import prices of each Japanese exporter was compared.

(67) To determine the level of the duty the price differences thus established have been expressed as a percentage of the weighted average cif value. The result of this calculation leads to the following provisional anti-dumping duties to be imposed for each exporter in order to eliminate the injury suffered :

— Iwasaki :	71,7 %
— Phoenix :	84,2 %
— Sigma :	85,4 %

(68) Since the dumping margins found for all the exporters concerned exceed the injury level the above duties will be imposed in accordance with Article 13 (3) of Regulation (EEC) No 2423/88.

(69) For those companies which neither replied to the Commission questionnaire nor otherwise made themselves known, the Commission considered it appropriate to impose the highest duty calculated, i. e. 85,4 %. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producer/exporters were any lower than the highest anti-dumping duty determined.

(70) A period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose.

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty of 85,4 % of the net free at Community frontier price before duty is hereby imposed on imports of linear tungsten halogen lamps corresponding to CN code ex 8539 21 91 (Taric code : 8539 21 91 91) originating in Japan (Taric additional code : 8462).

2. The rate of the duty for the products manufactured by the following companies shall be :

— Iwasaki Electric Co. Ltd : 71,7 % (Taric additional code : 8640)

— Phoenix Electric Co. Ltd : 84,2 % (Taric additional code : 8641)

3. The duty specified in paragraphs 1 and 2 shall apply only to linear tungsten halogen lamps exceeding 100 volts, of 100 watts or more, double ended with R7s caps of a kind used for illumination.

4. The provisions in force concerning customs duties shall apply.

5. The release for free circulation in the Community of the products referred to in paragraphs 1 and 3 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 July 1990.

For the Commission
Frans ANDRIESSEN
Vice-President